Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

COLUMBIA MACHINE, INC.,

Petitioner,

vs.

HERMAN E. SCHNIDRIG,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HERMAN E. SCHNIDRIG, Plaintiff, v. COLUMBIA MACHINE INC., Defendant.	)	Civil No. 92-1304-MA OPINION (Filed Aug. 10, 1993)

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MARSH, Judge.

Plaintiff originally filed this action against his employer under the Age Discrimination Act, 29 U.S.C. § 623(a)(1), alleging that he was denied a promotion because of his age. At that time, plaintiff was acting as the general manager of the corporation, had applied for the position of company president, and was informed that the company had hired an outside candidate who was approximately 10 years younger than plaintiff. One week after filing his original complaint, plaintiff resigned and filed an amended complaint asserting two additional claims for common law wrongful discharge on the basis

that he had been constructively discharged because of his age and in retaliation for complaints about perceived age discrimination. Defendant now seeks summary judgment against the denial of promotion claim on grounds that plaintiff failed to meet the minimum qualification requirements developed by the Board of Directors and because he fails to produce evidence raising an inference of discrimination. Defendant seeks summary judgment against plaintiff's two wrongful constructive discharge claims arguing that plaintiff has failed to produce sufficient evidence that he was "discharged," due to "intolerable" working conditions. For the reasons which follow, defendant's motion is granted.

STANDARDS

Summary judgment is appropriate if the court finds that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). There is no genuine issue of material fact where the nonmoving party fails "to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Harper v. Wallingford*, 877 F.2d 728, 731 (9th Cir. 1989).

All reasonable doubts as to the existence of genuine issues of fact must be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976). The inferences drawn from underlying facts must be viewed in the light most favorable to the party opposing the motion. *Valadingham v. Bojorquez*, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences can be

drawn, summary judgment is inappropriate. *Sankovich v. Ins. Co. of North America*, 638 F.2d 136, 140 (9th Cir. 1981).

BACKGROUND

Defendant is a Washington corporation in the business of designing, manufacturing and selling concrete block making and palletizing equipment. Defendant is a closely held corporation owned by the Neth family. Fred Neth, Sr., is the chairman of the Board of Directors and the majority shareholder and his two daughters and son, Fred Jr., are also members of the board. At the age of 50, plaintiff began working for defendant as a production manager in 1980. In 1981, plaintiff was promoted to vice-president of manufacturing – one of three vice-president positions within the company at that time.

In February of 1991, Tom Neth, the company's 38 year old president, resigned. Plaintiff contends that Tom Neth resigned under pressure due to substance abuse problems and his unauthorized use of company expense accounts, while one of the board members, Dorothy Osadchuk, would only indicate that the Board was dissatisfied with Tom Neth's "attendance record" and lack of "maturity." Regardless of the reasons underlying his resignation, Tom Neth left abruptly and plaintiff was "promoted" as an interim "general manager," and "vice-president of operations" while the Board began its search for a new president.[1] Fred Neth, Jr. was then made vice-

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[1] Apparently the "general manager" designation was a new one – the original organization has Fred Neth, Sr. at the top as CEO, with the president, Tom Neth immediately below him, and

president of manufacturing, with Robin Popple continuing to act as vice-president of marketing and Larry Morrow held the position of vice-president of finance.

The Board of Directors began the process of locating and hiring a president by first developing a list of minimum qualifications and a job description. This list included such general items as a "strong work ethic," a "warm, friendly personality," "effective communication skills," and "team leadership," as well as two specific requirements:

> (1) a minimum of 5 years broad general management experience and proven track record with a medium sized company or a division of a larger firm engaged in the design, manufacture and sale of industrial machinery or equipment; and
>
> (2) strong operations (manufacturing) background with a thorough working knowledge of accounting and financial reporting.

On December 17, 1991, the Board authorized a nationwide search for candidates and decided to hire an executive search firm. In March of 1992, the Board hired Ronald Goerss of the firm of Smith, Goerss & Ferneborg to search for and present candidates meeting the Board's job profile and minimum qualifications.

In a letter dated February 12, 1992 and on numerous other occasions, plaintiff informed the Board that he was interested in the president's position. However, in several

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three vice-presidents below Tom Neth. Although plaintiff was not referred to as the "president," his role as "general manager" is above the vice-president in the organizational chart.

meetings with Fred Neth Sr., plaintiff contends that he was told that the Board was looking for a younger candidate. In her shorthand notes from a Board meeting which took place on February 25, 1992, Irene Shropshire indicated that Joe Barclay, an outside Board member, said: "they should send a copy of job description, maximum compensation level, one perk, company car, age 45-50 years, and past experience with long-term potential." The age qualification was not included within the formal typewritten meeting notes. Dorothy Osadchuck, another board member, indicates in her deposition that she recalled that age was discussed in relation to the new president, but it was in the context that a candidate would "probably have to be in their 40s to have the experience," required by the Board's job profile.

Ronald Goerss solicited applications nationwide and indicates that he was instructed "to give due consideration to any qualified employees of Columbia." Goerss interviewed all three Columbia vice-presidents, including plaintiff, and submitted five candidates to the Board for its consideration. Goerss explained that he did not select plaintiff as a candidate because he did not meet the minimum qualifications established by the Board – he lacked both the five years of general management experience with a manufacturing company and lacked the thorough working knowledge of accounting and financial reporting. Goerss indicates that he relied solely upon the Board's job profile criteria to select candidates and that he was never instructed to, nor did he consider age in making his selections.

The Board interviewed two of the five candidates presented by Goerss.[2] In July of 1992, the Board offered the president's position to Gerry O'Meara who was 46 years old at the time. Thereafter, plaintiff filed his first complaint with the EEOC while continuing in his position as the interim general manager and vice-president of operations. After filing his complaint, plaintiff and Larry Morrow, vice-president of finance, were asked not to attend a meeting with a bank representative. Robin Popple, vice-president of marketing was given a pay raise which then exceeded plaintiff's rate of pay.[3]

On October 8, 1992, O'Meara accepted the Board's offer. Fred Neth, Sr. decided that the new president should be given his corner office in the executive suite and each of the executives was moved to accommodate this shift. In the process, plaintiff was moved to a smaller office and his former office was given to Popple. Plaintiff contends that he was told by several employees that their supervisors had instructed them not to talk to him, but admits that he continued to communicate with other

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[2] The other candidate interviewed was Roger Faganni who was 45 years old at the time.

[3] Plaintiff intimates that Popple was a "subordinate" who was given a "promotion." However, prior to plaintiff's appointment as the interim general manager, Popple and plaintiff were both vice-presidents and on the same organizational level for different departments. Further, the record reveals that Popple independently sought and negotiated the pay raise with the Board. Prior to Popple's pay raise, plaintiff received the highest salary of any vice-president. There is no evidence in the record that any other vice-president sought or received a raise, nor is there any evidence that plaintiff ever asked for a raise in pay.

employees. After learning of O'Meara's selection, plaintiff contends that no one told him what position he would hold when O'Meara came on board and that it would be left to O'Meara. Plaintiff did not stay long enough to find out his fate, but resigned effective October 27, 1992 with O'Meara beginning work in November of 1992.

Following his resignation, defendant discovered that plaintiff had taken confidential documents from personnel files and from the desks of other employees and copied them without authorization in violation of company policy. Defendant claims that, had it known of this activity, it would have terminated plaintiff.

DISCUSSION

a. Failure to Promote

The Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621, *et seq.*, provides that it is unlawful for an employer "to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age." § 623(a)(1). Protection under the act extends to all individuals who are at least 40 years old. § 631(a).

A plaintiff alleging discrimination under the ADEA may rely upon two alternative theories: disparate treatment or disparate impact. *Rose v. Wells Fargo*, 902 F.2d 1417, 1421 (9th Cir. 1990). In this case, plaintiff relies upon the disparate treatment theory. Therefore, to establish a *prima facie* case of age discrimination in the failure

to promote context, plaintiff must produce enough evidence to permit the trier of fact to infer that: (1) he is a member of the protected class; (2) he applied for a position for which he was qualified; and (3) a younger person with similar qualifications received the position. *Cotton v. City of Alameda*, 812 F.2d 1245, 1248 (9th Cir. 1987). The initial burden imposed upon the plaintiff is not meant to be "onerous" and need only "suggest" that the challenged decision was based on age. *Rose*, 902 F.2d at 1421, n.1, *citing Diaz v. American Tel. & Tel.*, 752 F.2d 1356, 1361 (9th Cir. 1985).

If the plaintiff establishes a *prima facie* case, the burden then shifts to the employer to produce evidence that it had legitimate non-discriminatory reasons for its decision. *Id.* If the employer satisfies this burden, the burden of production shifts back to the plaintiff to establish that the defendant's proffered reasons are pretextual. *Id.* Although the burden of production shifts, the burden of persuasion remains with the plaintiff at all times. *Id., citing Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). For the purposes of avoiding summary judgment, plaintiff need only "tender a genuine issue of material fact as to pretext." *Cotton*, 812 F.2d at 1248. A plaintiff may demonstrate pretext in two ways: either by "directly persuading the court that a discriminatory reason more likely motivated the employer," or by showing that the employer's proffered reason is "unworthy of credence." *Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1437 (9th Cir. 1990).

In this case, there is no dispute that plaintiff is a member of the protected class, nor is there any dispute that plaintiff was performing his job in a satisfactory

manner. Defendant contends, however, that plaintiff was not qualified for the position given the job profile criteria created by the Board. Plaintiff concedes that he lacks the 5 years of management experience and the background in accounting and finance. There is also no dispute that O'Meara met both qualifications. Further, plaintiff does not dispute that these are legitimate job-related criteria. Instead, plaintiff claims that he was nevertheless "qualified," because he had successfully been running the company for 18 months prior to his resignation.

The fact that the plaintiff was capable of running the company as the general manager and vice-president of operations does not necessarily mean that he was qualified for the president's position. A plaintiff's opinions of his own qualifications has little probative value. *Schuler v. Chronicle Broadcasting*, 793 F.2d 1010, 1011 (9th Cir. 1986). Further, plaintiff's argument misses the mark because the question is not whether plaintiff was the best qualified candidate in the abstract, but whether plaintiff was more qualified than O'Meara with respect to defendant's chosen criteria. *Cotton*, 812 F.2d at 1249. As the Ninth Circuit has emphasized, "[t]he ADEA does not make it unlawful for an employer to do a poor job of selecting employees. It merely makes it unlawful to discriminate on the basis of age." *Id.* Thus, unless the selection criteria has a disparate impact on a protected class of employees, courts are generally not permitted to "second guess" selection criteria. *Id.* In this case, if the selection criteria had a disparate impact on any "class" of employees it would have affected *younger* workers given the types and minimum years of experience requested.

Plaintiff's only disagreement with the Board's selection criteria is that it is "vague." I disagree, but to the extent that several criteria involved a degree of subjectivity, I note that subjective criteria should be examined with a higher level of scrutiny because it may be susceptible to discriminatory abuse. However, the use of subjective criteria is less suspect in cases involving higher level employment for which skills are necessarily measured in a subjective manner. *Nanty v. Barrows*, 660 F.2d 1327, 1334 (9th Cir. 1981). In order to show that the use of these criteria was improper, plaintiff must show that their use was arbitrary. *Casillas v. United States Navy*, 735 F.2d 338, 344 (9th Cir. 1984). To rebut a claim if arbitrariness, the employer need not show that the criteria used were necessary to performance of the job, only that they were legitimately related to the job. *Id.* Plaintiff offers nothing to show that significant management, financial and accounting experience would not be helpful in performing the job as Columbia's president. Thus, plaintiff fails to show that these alleged "vague" requirements were arbitrary and therefore pretextual.

Based upon the foregoing, I find that plaintiff was not "qualified" for the President's position given the legitimate, non-discriminatory criteria created by the Board for use by the outside consulting agency, and, thus, he fails to establish a *prima facie* case of discrimination under the ADEA. However, I am cognizant of the fact that the guidelines for establishing a *prima facie* case of discrimination are flexible and that the case may nevertheless proceed if there is enough evidence to raise an inference of intentional discrimination.

Evidence demonstrating that the employee hired for the position was more qualified than the plaintiff is sufficient to meet the employer's burden of producing a legitimate reason for refusing to hire the plaintiff. *Parsons v. County of Del Norte*, 728 F.2d 1234, 1239 (9th Cir. 1984), *cert. denied*, 469 U.S. 846 (1984). Defendant has produced evidence that O'Meara met the qualifications of its job profile while plaintiff did not. Accordingly, defendant has met its burden of production.

Since the defendant has articulated a valid, non-discriminatory reason for not promoting plaintiff, the burden shifts back to the plaintiff to offer evidence that the reason given is a pretext for discrimination. Although disputed, plaintiff has produced evidence that the defendant's CEO, Fred Neth, Sr., told him on several occasions that the Board would not consider him for the President's position because they wanted someone "younger."[4]

Assuming the truth of plaintiff's assertions, if the outside consulting agency had selected plaintiff as one of the candidates it recommended to the Board, then I would indeed find that plaintiff had produced sufficient evidence to create a material issue of fact regarding defendant's potentially discriminatory motives. However, by hiring the outside consulting firm to narrow the field and select candidates for the Board's consideration, any discriminatory comments made by Fred Neth, Sr. to the plaintiff become attenuated from the decision-making

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[4] In addition, plaintiff relies upon several double and triple hearsay statements that others told him that the Board would not consider him because it was looking for a "younger" candidate.

process absent some evidence that such discriminatory motives were communicated to the consulting firm.[5] There is no evidence in the record that Goerss was ever told to consider age or that he ever considered age in selecting candidates for the Board's consideration.

Although Fred Neth Sr. was ultimately involved in the final decision-making process, he was not involved in the process which eliminated plaintiff from the field of candidates.[6] Statements made by a person who is not part of the decision-making process at issue are considered "stray remarks." *Merrick*, 892 F.2d at 1438-39; *Skagen v. Sears*, 910 F.2d 1498, 1499 (7th Cir. 1990); *see also Atkin v. Lincoln Property*, 991 F.2d 268, 272 (5th Cir. 1993) (vague, remote remarks about age insufficient to support jury verdict); *Smith v. Firestone Tire and Rubber Co.*, 875 F.2d 1325, 1330 (7th Cir. 1989) (comments unrelated to decisional process insufficient to demonstrate decision based upon impermissible motives); *Mauter v. The Hardy Corp.*, 825 F.2d 1554, 1558 (11th Cir. 1987) (affirming summary judgment for employer despite vice-president's statement that company was going to 'weed out

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[5] Effective "attenuation" only works one way – an employer generally may not insulate itself from liability by delegating a hiring decision to someone who engages in discriminatory practice. *Powers v. Alabama Dept. of Educ.*, 854 F.2d 1285, 1295 (11th Cir. 1988), *cert. denied*, 490 U.S. 1107 (1989). Thus, had Goerss impermissibly relied upon age in selecting candidates for the Board's consideration, defendant could not escape liability.

[6] In his deposition, plaintiff indicated that the last age related comment Fred Neth, Sr. made to him was on July 12, 1992 because shortly thereafter, Neth suffered several strokes and began radiation treatment "so he wasn't around much after that."

the old ones,' in part, because vice-president played no role in decision to terminate plaintiff); and *Butler v. Portland General Electric*, 748 F. Supp. 783, 792 (D. Or. 1990), *aff'd* 958 F.2d 377 (1992); *compare Radabaugh v. Zip Feed Mills*, ___ F.2d ___, 1993 WL 239918 (8th Cir. July 6, 1993) (corporate planning documents emphasizing "youth" were sufficient to establish jury question where documents' author was also decision-maker). In essence, there must be a connection between the remark and the challenged adverse employment decision. *Nesbit v. Pepsico, Inc.*, 994 F.2d 703, 705 (9th Cir. 1993).

Based on the foregoing, I find that plaintiff has also failed to produce sufficient evidence to raise an inference of age discrimination to demonstrate that defendant's proffered non-discriminatory reasons for hiring O'Meara were pretextual.

b. Constructive Discharge

Plaintiff argues that, following O'Meara's selection, he was effectively forced to resign because of his age and in retaliation for filing a claim with the EEOC regarding defendant's failure to offer him the President's position. In support of his claim, plaintiff points to the fact that after the Board announced O'Meara's selection: (1) plaintiff was moved to a smaller office; (2) Popple, another vice-president, was given a raise; (3) plaintiff was excluded from a meeting with a banking representative; and (4) other employees were told by their supervisors not to talk to plaintiff, although they didn't follow this directive. Defendant denies that plaintiff was "discharged" and further, denies that any of its actions

following the announcement of O'Meara's selection were motivated by discriminatory intent.

The amended complaint and pretrial order failed to specify the legal basis for plaintiff's wrongful constructive discharge claims. Defendant initially argued, without objection, that Washington law should apply. Upon further questioning from the court, plaintiff agreed that Washington is the state with the most significant contacts with the case, but nevertheless argued that Oregon law should govern. Both Oregon and Washington have recognized the "tort" of wrongful constructive discharge in certain limited circumstances as an exception to the general rule that employment is "at-will." *Sheets v. Knight*, 308 Or. 220, 228 (1990); *Bratcher v. Sky Chefs, Inc.*, 308 Or. 501 (1989); *Farnam v. CRISTA Ministries*, 116 Wash.2d 659, 807 P.2d 830, 834 (1991).[7] Washington has not specifically recognized the tort of wrongful constructive discharge based upon age, but has noted the possibility. *See Douchette v. Bethel School Dist. No. 403*, 117 Wash. App. 824, 795 P.2d 162, 164 n.1 (1990) (dismissing action for failure to file within statute of limitations). Oregon also has not specifically addressed the tort in the age context, but has recognized the tort of wrongful constructive discharge in the context of an allegation of retaliation following formal

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[7] The four categories of "wrongful" reasons for termination generally recognized by Washington courts include terminations – either direct or constructive – based upon an employees' (1) refusal to commit an illegal act; (2) exercise of a public duty; (3) exercise of a legislative right or privilege; or (4) whistle blowing activity *if* the employee is seeking to further a public good and not merely a private or proprietary interest. *Farnam*, 807 P.2d at 834.

complaints of sexual and racial discrimination. *Seitz v. Albina Human Resources Center*, 100 Or. App. 665, 674 (1990). Thus, for the purposes of this motion, I have assumed that both Oregon and Washington would recognize the tort of wrongful constructive discharge based upon age or retaliation for an EEOC filing regarding age discrimination and, further, that both states would look to federal precedent for guidance.

The doctrine of "wrongful constructive discharge," is well established in federal employment law as a means of recognizing that there may be instances in which an employer doesn't actually terminate an employee but instead, tells the employee to "resign or be fired," or makes the conditions of employment so intolerable so as to effectively force the employee to resign for impermissible discriminatory reasons. *See e.g. Sanchez v. City of Santa Ana*, 915 F.2d 424, 431 (9th Cir. 1990), *cert. denied*, 112 S.Ct. 66 (1991); and *Thomas v. Douglas*, 877 F.2d 1428 (9th Cir. 1989).

Whether a "constructive discharge" exists must be examined under the totality of the circumstances and the test applied is an objective one, that is whether a reasonable person in plaintiff's position would have felt forced to resign. *Sanchez*, 915 F.2d at 431.[8] Generally, whether

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[8] Although I doubt the application of Oregon law to this action, I note that Oregon standards differ from the federal in that a plaintiff need only prove that he or she felt forced to resign (a subjective test). *Bratcher*, 308 Or. at 506. However, the employee must still come forward with evidence that the employer created "unacceptable" working conditions with the intent (subjective) of forcing the employee to resign. *Id.*

working conditions have risen to an "intolerable level" is a factual question for the jury. *Id.* However, a single "isolated" incident may fail as a matter of law to support a claim of constructive discharge. *Id.; see also Watson v. Nationwide Ins. Co.*, 823 F.2d 360, 361 (9th Cir. 1987); and *Skagen*, 910 F.2d at 1501 (rejecting argument that summary judgment is never appropriate in age discrimination cases).

Generally, courts look for evidence of either "aggravating circumstances" or a "continuous pattern of discriminatory treatment," to support a constructive discharge claim. *See e.g., Sanchez*, 915 F.2d at 431 (employer removed plaintiff's merit pay, gave plaintiff negative evaluations and rebuffed plaintiff's repeated attempts to invoke the City's grievance procedure); *Samarzia v. Clark County*, 859 F.2d 88 (9th Cir. 1988), *amended*, 866 F.2d 1185 (9th Cir. 1989) (younger employees with less seniority selected over plaintiff, co-workers referred to plaintiff as "senile" and sent him a memo with "retire now," circled); *Watson*, 823 F.2d at 360-361 (following interracial marriage, plaintiff was written up for a violation when other similarly situated employees were not, received negative performance reviews for first time and supervisor called her a derogatory name and threatened her with a demotion if she did not resign); *Williams v. Caterpillar Tractor Co.*, 770 F.2d 47 (6th Cir. 1985) (8-level demotion to a position involving heavy lifting sufficient to support pretext claim); *Stamey v. Southern Bell Tel. & Tel. Co.*, 859 F.2d 855, 860 (11th Cir.), 867 F.2d 1431, *cert. denied*, 490 U.S. 1116 (1989) (replacement was at plaintiff's desk doing her work before plaintiff had notified employer of her decision regarding early retirement);

Seitz, 100 Or. App. at 674-75 (unsatisfactory evaluation inconsistent with prior work history, plus reduction in pay); *compare McCann v. Litton Systems, Inc.*, 986 F.2d 946 (5th Cir. 1993) (transfer with a 12% pay cut and reduction in support staff insufficient to demonstrate constructive discharge); *Shealy v. Winston*, 929 F.2d 1009 (4th Cir. 1991) (upholding summary judgment for employer where chief magistrate offered demotion or retirement). Subjective, personal discomfort is insufficient to sustain a wrongful discharge claim. *Thomas*, 877 F.2d at 1434.

In this case, plaintiff was not demoted, he did not receive a pay-cut, he was not asked or encouraged to resign or accept early retirement, he was not disciplined, nor was he harassed in such a way that he would have been unable to perform his job duties. The effect of O'Meara's assumption of the presidency and what plaintiff's new job title and/or responsibilities would have been is purely speculative since plaintiff resigned prior to O'Meara's arrival. There is no evidence in the record that the Board or any other employee at Columbia wanted plaintiff to resign or encouraged him to do so nor is there any evidence in the record to show that any member of the Board ever expressed any dissatisfaction with plaintiff's job performance following his complaint to the EEOC.

There is no dispute that plaintiff was moved to a smaller office, that Popple received a pay raise and that plaintiff and another vice-president (Larry Morrow) were excluded from a meeting with the company's bank representative. There is also no dispute that defendant instructed employees not to discuss plaintiff's pending

EEOC complaint, but that plaintiff otherwise communicated with employees as usual. I find no evidence that some or all of these actions were somehow motivated to force plaintiff to resign, but note that the activities span less than a one month period and, even in combination, are not so intolerable that a reasonable person in plaintiff's position would have felt forced to resign.

Based on the foregoing, I find that plaintiff's claims of wrongful constructive discharge based upon his age or in retaliation for filing an EEOC complaint fail because he has not produced sufficient evidence that he was "discharged." There is no evidence of discrimination regarding his active job duties, nor is there sufficient evidence to create a jury question as to whether his workings conditions were "intolerable."

CONCLUSION

Based on the foregoing, I find that plaintiff has failed to establish a *prima facie* of age discrimination under the ADEA or constructive discharge under common law.[9] Accordingly, defendant's motion for summary judgment #18 is granted and its motion to strike #35 is moot.

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[9] Based on my findings, I need not reach defendant's alternative claim that plaintiff could not prove damages because defendant would have terminated him had it known that plaintiff copied and removed confidential and personnel documents without authorization.

DATED this 10 day of August, 1993.

/s/ Malcolm F. March
Malcolm F. Marsh
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HERMAN E. SCHNIDRIG, Plaintiff, v. COLUMBIA MACHINE INC., Defendant.	)	Civil No. 92-1304-MA ORDER (Filed Aug. 10, 1993)

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MARSH, Judge.

In accordance with my opinion filed on this date, defendant's motion for summary judgment #18 is GRANTED and its motion to strike #35 is MOOT.

IT IS SO ORDERED.

DATED this 10 day of August, 1993.

/s/ Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HERMAN E. SCHNIDRIG, Plaintiff, v. COLUMBIA MACHINE INC., Defendant.	)	Civil No. 92-1304-MA JUDGMENT (Filed Aug. 10, 1993)

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MARSH, Judge.

Based on the record, this action is dismissed.

DATED this 10 day of August, 1993.

/s/ Malcolm F. Marsh
Malcolm F. Marsh
United States District Judge